IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No.949 of 1989
Date of decision: September 04, 2006

Shri Siri Chand Yadav

Appellant
Through:
Mr.O.P.Goel, Senior Advocate
with Ms.Mamta B.Jain, Advocate

v.

Smt.Bhagwati Devi and others

Respondents
Through:
Mr.S.K.Jain, Advocate for the claimants.
Mr.Vinod Gupta, Advocate for the Insurance Company

CORAM:

Hon'ble Mr. Justice Rajesh Bindal

1. Whether Reporters of local papers maybe allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest?

Rajesh Bindal, J.

This is an appeal filed by the owner of the truck challenging award dated 28.4.1989 passed by the Motor Accident Claims Tribunal, Rohtak (for short, `the Tribunal') in M.A.C.T. Case No.25 of 1988, whereby the liability of the Insurance Company has been held to be limited to the extent of Rs. 1,50,000/- as per the policy for the reason that the insured/appellant did not pay any extra premium for coverage of unlimited third party risk.

Briefly, the facts are that Ved Parkash died in an accident, while going on his bicycle, in the night intervening 27th/28th May, 1988, being hit by a truck owned by the appellant. The deceased, who was 41 years of age, was working as Teacher in Nagar Nigam Prathmic Bal Vidhyala, Dhanse, New Delhi and was getting salary of Rs.2481/- per month. As against the claim of Rs.

15,00,000/- made by the claimants, the Tribunal awarded a sum of Rs. 2,68,800/- which was directed to be apportioned amongst the claimants, i.e., his widow, three minor sons and a minor daughter. The plea of the Insurance Company was accepted to the extent that its liability was limited to the extent of Rs. 1,50,000/- as per the terms of the policy as the owner of the vehicle had not paid any extra premium for coverage of unlimited risk.

Shri O.P.Goel, learned senior counsel for the appellant submitted that copy of the policy, placed on record, is a typed certified true copy and the original thereof not having been placed on record, the same could not be relied upon to defeat the claim of the appellant to plead that the liability of the Insurance Company in the present case was unlimited. The onus to prove the same was on the Insurance Company and having failed to adduce any evidence to that extent, adverse view should be taken against the Insurance Company. He further submitted that even if a document has been exhibited, the Court can still refuse to read the same in evidence. He relied upon Krishan Lal and others v. Mohd. Din and others, 1993 ACJ 907 (Delhi) Old Act and Om Wati and others v. Mohd. Din and others, (2001-2) P.L.R. 21 (Delhi) (DB).

On the other hand, Mr. Vinod Gupta, learned counsel for the Insurance Company has submitted that the appellant neither in his reply to the claim petition nor in his oral evidence stated that the liability of the Insurance Company is unlimited. Had the owner of the vehicle claimed so in his pleadings and in the oral statement, the onus might have been shifted on the Insurance Company to prove that its liability was not unlimited but limited as per the terms of the policy. The factum of insurance policy having not been disputed by the Insurance Company, initial onus to prove that the insured paid extra premium to get unlimited coverage for third party risk was on the insured, which the appellant failed to discharge. He has referred to the statement of the appellant, the relevant part of which is extracted below:

> "I am the owner of truck No. DEG-3650. I operate truck in the area of Delhi. In May, 1988, I did not send my truck to Jhajjar side on any day. I do not know Arjun who has appeared as witness today. Arjun have never remained driver on my truck. My truck was taken by the police from Najafgarh."

Learned counsel has further submitted that the insurance policy, which has been placed on record and is exhibited as `RX', was put to the appellant at the time of his cross-examination and he did not raise any objection to the admission thereof. According to the counsel, at this stage, such a plea cannot be taken that the document is not admissible in evidence. Still further, it is submitted that a perusal of the policy on record clinches the issue as the same shows that no extra premium was paid for unlimited third party liabilities. Accordingly, he prayed for dismissal of the appeal.

Mr. S.K. Jain, learned counsel for the claimants, in the present case, submitted that this being a dispute between the insurer and the insured, the claimants are being made to suffer unnecessarily as till date, the entire amount of compensation has not been received by the claimants. He relied upon the judgment of Hon'ble Supreme Court in National Insurance Co. Ltd. v. Challa Bharathamma and others, 2004 ACJ 2094 to state that even if it is held that the liability of the Insurance Company was limited, still in terms of the law laid down by Hon'ble the Supreme Court, the Insurance Company is liable to pay the entire amount to the claimants and then get it reimbursed from the insured/ appellant.

I have heard learned counsel for the parties and have perused the record. The judgments, relied upon by the respective parties, have also been gone into. Two judgments of Delhi High Court, relied upon by learned senior counsel for the appellant, are clearly distinguishable on facts. In Krishan Lal's case(supra), it is clearly evident that the statement of the insured to the effect that his liability was unlimited remained unchallenged, unrebutted and uncontroverted on record. It was in these circumstances that copy of the policy placed on record by the

Insurance Company was not relied upon by the Court to hold that the liability of the Insurance Company was limited in the absence of policy. Similarly, in the case of Om Wati (supra), it had come on record that even though the Insurance Company had taken a plea in the written statement that its liability was limited, but no issue was framed. The claim of the owner in this case was also specific when he claimed that the vehicle is fully insured and in the event of accident, entire liability of the third party was of the Insurance Company. This being the position, the onus shifted on the Insurance Company to prove that its liability was limited, as per the terms of the policy. The policy in Om Wati's case (supra) was not exhibited but was merely marked. The Insurance Company even failed to summon the original policy from the insured. Under these circumstances, the Court refused to accept the typed copy of the policy or the statement of the concerned officer of the Insurance Company that the liability of the insurer was limited.

A perusal of the documents and the statements on record, in the present case, clearly shows that firstly there is no plea by the insured-appellant that liability of the Insurance Company was unlimited which could shift the burden on the Insurance Company to prove that in fact, having not charged extra premium for coverage of unlimited third party liability, its liability was limited. Secondly, the true typed copy of the policy of insurance, placed on record by the Insurance Company, was put to the owner-appellant during his cross-examination and he did not object to it. Further, in the present case, a specific issue, namely, what amount of compensation is payable by the Insurance Company, has been framed by the Tribunal. Once the factum of insurance was not in dispute, initial onus to prove that the insured had paid extra premium for coverage of unlimited third party was on the insured and not on the Insurance Company. In the case in hand, as is evident from the facts, the appellant not even having claimed that liability of the Insurance Company was unlimited, there was no occasion for the Insurance Company to have led evidence to dislodge anything. Finding no merit in the

contention raised by learned senior counsel for the appellant, I concur with the view taken by the Tribunal, dismiss the appeal of the insured and hold that the liability of the Insurance Company is limited.

However, I find merit in contention raised by learned counsel for the claimants that even if the insurer is not legally liable to satisfy the award beyond its liability, initial burden for payment of the entire compensation awarded by the Tribunal, even in a case where the liability of the Insurance Company is held to be limited, is on the Insurance Company. The following passage from the judgment of Hon'ble the Supreme Court in Challa Bharathamma's case (supra) would be a guiding factor for the same:

> "The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned executing court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the concerned Regional Transport Authority. The executing court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, i.e., the insured."

Accordingly, the Insurance Company is directed to satisfy the award in terms of the judgment of Hon'ble the Supreme Court in Challa Bharathamma's

case (supra).

The appeal is disposed of in the manner indicated above.

(Rajesh Bindal)
Judge

September 04, 2006
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